IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24399 of 2005
To
SPECIAL CIVIL APPLICATION No. 24409 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRUTLAL THAKARSHI - Petitioner(s)

Versus

DY.EXECUTIVE ENGINEER & 1 - Respondent(s)

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Appearance :
MR CL SONI for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 06/02/2006

ORAL JUDGMENT

As common question of law and facts arise in these group of petitions, they are being disposed of by this common judgment and order.

2. By way of these petitions under Article 227 of the Constitution of India, the respective petitioners have challenged the legality and validity of the judgment and order dated 16.11.2005 passed by the learned Presiding Officer, 3rd Fast Track Court, Rajkot District at Gondal in Regular Civil Appeals filed by the respondent No.1, Deputy Executive Engineer, Road & Building Sub-Division, Gondal, by which the learned Appellate Court has allowed the respective appeals under Section 9 of Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (hereinafter referred to as “the Act”) by quashing and setting aside the order passed by the competent authority, i.e., Deputy Collector, Gondal, in eviction cases and thereby allowed the applications submitted by the respondent No.1 for eviction against the respective petitioners and by further declaring that the respondent No.1 is entitled to recover peaceful possession of the suit shops from the respective petitioners and

the respective petitioners are directed to hand over peaceful possession of the suit shops to the respondent No.1.

2. That the land bearing 3200 sq.yds., known as 'Danapith' situate in the area of Gondal city is owned by the State Government and is under the administration of Public Works Department and 20 shops are constructed on the said land which came to be allotted to different persons for business purposes. That the shops in question came to be allotted to respondent No.2 of each of the petitions as tenants for the purpose of doing individual business and they had no right to sublet the above premises to any other person or for doing business in partnership without obtaining permission of the State Government. However it was found that the original-tenants, respondent No.2 in each of the petitions sublet the shops in question to the respective petitioners unauthorisedly and thereby they were

liable to hand over peaceful possession to the department. It appears that the respondent No.1 furnished information to the Deputy Collector, Gondal, regarding subletting by the original-tenants; requested to initiate the proceedings under the provisions of the Act and to pass eviction decree against respective petitioners as well as original-tenants, being respondent No.2 in each of the petitions. Lessees and sub-lessees, i.e., petitioners filed their joint written objections/reply wherein the petitioners contended that they are the lawful tenants of the disputed shops; that initially in the year 1991 eviction proceedings were started by the Deputy Collector, Gondal, and subsequently such proceedings were dropped by the department; therefore second proceedings are not maintainable; and therefore they requested to dismiss the applications. It was also contended on behalf of the respective petitioners that the lease in their favour be transferred as with

regard to some other shops the lease was transferred in favour of sub-tenants in the year 1985.

3. That the Deputy Collector, Gondal by order dated 12th March 1999 rejected the Eviction Cases No. 1/1996 to 11/1996 by directing the department to consider the request of the petitioners to transfer the lease and to accept the rent also. Being aggrieved and dissatisfied with the orders passed by the Deputy Collector, Gondal dated 12th March 1999 in Eviction Cases No. 1/1996 to 11/1996, the respondent No.1 preferred appeals under Section 9 of the Act and the learned Presiding Officer, 3rd Fast Track Court, Gondal, by judgment and order dated 16th November 2005 allowed all the appeals and quashed and set aside the order passed by the Deputy Collector, Gondal, dated 12th March 1999 by allowing the application submitted by the respondent No.1 for eviction against the petitioners as well as

respondent No.2 by declaring that the respondent No.1 is entitled to recover peaceful possession of the suit shops from the petitioners as well as respondent No.2 original-lessees. Being aggrieved and dissatisfied with the judgment and order passed by the learned Presiding Officer, 3rd Fast Track Court, Gondal, dated 16th November 2005 in Regular Civil Appeals No. 70 of 2001 to 79 of 2001 and 82 of 2001 the respective petitioners, sub-lessees have preferred the present Special Civil Applications under Article 227 of the Constitution of India.

4. Shri CL Soni, learned advocate appearing on behalf of the respective petitioners, has raised the following contentions;

(1) No notice as required under the provisions of the Act was served upon the petitioners, i.e., sub-lessees;

(2) The respondent No.1 has not produced original lease-deed and/or conditions of the lease deed and not pointed out whether it was permissible for the original-tenants to sublet the premises or not;

(3) The learned Presiding Officer, 3rd Fast Track Court, Gondal, has no jurisdiction as he is not the appellate authority as contemplated under Section 9 of the Act;

(4) In the past in the year 1985 the lease came to be transferred in favour of the sub-tenants and therefore similar treatment should be given to the petitioners as they are in occupation and possession of the shops in question since many years.

5. Shri CL Soni, learned advocate appearing on behalf of the respective petitioners has submitted that the Deputy Collector, Gondal dismissed the Eviction Cases mainly on one ground that the respondent No.1 had not produced any documents; nothing was discussed by the Deputy Collector on merits; except the application dated 15th March 1996 there was no other material on record and therefore the finding of the learned Appellate Court that sufficient evidence had been produced by the respondent No.1 before the Deputy Collector, Gondal is based on no evidence; and therefore the appellate Court ought to have remanded the matter to the Deputy Collector, Gondal, for deciding the same afresh. Shri Soni has also submitted that even this Court may also remand the matter to the Deputy Collector for a fresh decision. He has also further submitted that no notice as contemplated under the provisions of the Act was served upon the petitioners who are in possession of the shops in

question and against whom allegations are that they are the sub-tenants and in absence of any notice no eviction order could have been passed against the petitioners. Shri Soni has relied upon the judgment of the Hon'ble Supreme Court in the case of *M/s. Wire-Netting Stores and Another Vs. The Delhi Development Authority and Others.,* reported in *1969 (3) Supreme Court Cases 415* as well as another judgment of the Hon'ble Supreme Court in the case of *State of Haryana And Another Vs. Mohinder Pal and Others,* reported in (*2001) 9 Supreme Court Cases 292.* Relying upon the judgment of the Hon'ble Supreme Court in the case of State of Haryana and Another (supra), Shri Soni has submitted that where proposed evictees are in possession of the disputed land, there is no need for examination of the title. Relying upon the judgment in the case of *M/s. Wire-Netting Stores And Another (supra),* Shri Soni has requested to allow the present Special Civil Applications. Shri Soni has further submitted

that so far as other similarly situated sub-tenants are concerned, whose names are mentioned in the petitions, the lease came to be transferred in their favour however so far as the petitioners are concerned there is no transfer of lease in their favour and therefore the action of the respondent No.1 is discriminatory and violative of Article 14 of the Constitution of India. He has further submitted that the appellate Court, i.e., learned Presiding Officer, 3rd Fast Track Court, Gondal, is not an appellate authority as contemplated under Section 9 of the Act. He has further submitted that the petitioners are in possession of the shops in question since many years and if they are evicted some other persons might be inducted as tenants in whose favour the lease may be executed and who may be ready and willing to pay the higher rent and even petitioners are ready to pay enhanced rent and hence there is no reason for the respondent No.1 not to accept the petitioners as

tenants. For all these reasons, he has requested to allow the present Special Civil Applications.

5. Ms. Archana Raval, learned AGP, while opposing the present Special Civil Applications, has submitted that so far as the contention on behalf of the petitioners that no notice as contemplated under the provisions of the Act was served upon them is concerned, in fact all the petitioners submitted their reply jointly with the original-tenants and therefore it cannot be said that no notice was served upon the petitioners. She has further submitted that it is an admitted position that all the petitioners are sub-lessees; the original lease was in favour of the respondent No.2; and that it is ultimately for the petitioners to prove that the lease transfer in their favour is valid and that the subletting was permissible. She has further submitted that once the respondent No.1 has proved that the lease was in favour of respondent

No.2 and that the original-tenants have sublet the premises in favour of the petitioners unauthorisedly, the onus is upon the petitioners to prove that the subletting in their favour is legal and in accordance with law. She has further submitted that the petitioners have not produced any document and/or evidence to prove that they are the tenants and/or the lease in their favour is valid and/or even subletting by the respondent No.2 in their favour is valid. She has also further submitted that so far as the contention on behalf of the petitioners with regard to discriminatory treatment by the respondent No.1 is concerned, after 1985 and/or at least after the proceedings are initiated there is no transfer of tenancy/lease in favour of the sub-tenants. She has further submitted that merely because before many years some lease was transferred illegally and/or wrongly the same benefit cannot be given to the petitioners which is otherwise not permissible and that the

petitioners have no right in their favour to get the lease transferred more particularly for the same rent which was fixed in 1970-71 is much on lower side than the rent which could be fetched by the State Government if the shops in question are leased now. So far as the contention on behalf of the petitioners that the learned Presiding Officer, 3rd Fast Track Court had no jurisdiction as he being not the appellate authority as contemplated under Section 9 of the Act is concerned, firstly the petitioners have never raised such an objection and/or contention before the appellate Court and therefore it is not open for the petitioners to raise the said contention now. She has further submitted that when the facts are very clear and that there is no evidence produced by the petitioners authorising the original-tenants to sublet the premises/shops in question and that the petitioners have failed to produce any valid title in their favour, there is no question of

remanding the matter to the Deputy Collector, Rajkot. She has further submitted that pursuant to the direction issued by the appellate Court the respective petitioners submitted an application for transferring the lease in their favour which was considered by the competent authority and the same has been rejected. Ms. Raval has relied upon the affidavit-in-reply as well as the documents produced along with the affidavit-in-reply.

6. Heard the learned advocates appearing for the parties. It is not in dispute that the original-lease was in favour of the respective respondent No.2 and that the petitioners are the sub-tenants. There is no evidence produced on behalf of the petitioners by which it can be said that subletting in their favour by the respective respondent No.2 is valid. These are all undisputed facts, and, considering the same, the present Special Civil Applications are required

to be decided. Now, it is the contention on behalf of the petitioners that no notice was served upon the petitioners as contemplated under the provisions of the Act. However, it is required to be noted that not only the respective petitioners appeared before the competent authority under the Act but they submitted their respective replies and/or objections and when the petitioners submitted their reply and participated in the proceedings, the contention on behalf of the petitioners that no notice was served upon the petitioners as required under the provisions of the Act cannot be accepted. The purpose of issuance of notice upon the concerned person is to bring to his notice the proposed action so that the person concerned can submit his objection and/or reply. Therefore, considering the facts of the case, when the petitioners did submit their objections/reply and had participated in the proceedings, the contention on behalf of the petitioners cannot be

accepted.

7. The next contention on behalf of the petitioners is that the learned Presiding Officer, 3rd Fast Track Court, Gondal had no jurisdiction as he is not the appellate authority as contemplated under Section 9 of the Act. It is required to be noted that such a contention/objection is not raised before the Appellate Court. The petitioners participated in the appeal proceedings and allowed the learned Judge to proceed with the appeal and pass the order and only at the time when the judgment and the order is passed which is against them, such a contention is raised now before this Court for the first time in a petition under Article 227 of the Constitution of India, which is not permissible. If such an objection had been raised before the appellate Court, the appellate Court might have produced the relevant notification. However, as stated above, no such contention/objection was raised before the

Appellate Court the same cannot be permitted to be raised for the first time before this Court in a petition under Article 227 of the Constitution of India.

8. The next contention raised on behalf of the petitioners is that in case of some other two persons with regard to shop No. 20 and 1 there was transfer of lease in favour of sub-tenants and therefore similar treatment should be given to the petitioners also and the lease should be transferred in their favour also. First of all, it is required to be noted that such a transfer was in the year 1985, and it is the case on behalf of the respondent No.1 that thereafter in no case the lease has been transferred in favour of the sub-tenants. As such the petitioners have no right in their favour to get the lease transferred in their names as sub-tenants. Merely because some wrong order was passed in past, the petitioners cannot claim parity and/or

similar treatment which otherwise is not permissible under the law. The petitioners have not pointed out any provision by which it can be said that such a transfer of lease is permissible. Merely because some orders are passed in favour of some person, the petitioners cannot claim the same benefit. Even otherwise, as stated in the affidavit-in-reply there is no transfer of lease in favour of any other sub-tenants. Even subsequently also, the petitioners submitted their applications pursuant to the direction issued by the appellate Court by judgment and order dated 16th November 2005 for regularizing possession of the suit shops and the same came to be considered by the authority and has rejected the said applications and the said decision has not been challenged by the petitioners.

9. So far as the judgment relied upon by the learned advocate appearing on behalf of the

petitioners, more particularly the judgment of the Hon'ble Supreme Court in the case of State of Haryana & Another (supra) and the contention raised on behalf of the petitioners that when the petitioners are found to be in possession of the disputed shops there is no need for examination of their title, are concerned, it is required to be noted that the said judgment is required to be read as a whole and the learned Counsel cannot pick-up only one or two sentences. The facts before the Hon'ble Supreme Court were that the Government has taken steps to evict the occupants and damage the khokhas constructed by them without following due procedure prescribed by law and the contention on behalf of the State Government was that though they might be in possession of the disputed land they had no valid title. On this fact situation, the Hon'ble Supreme Court has ruled that when the persons are found to be in possession of the property in question and had put up structures thereon, the

State Government was required to follow due procedure prescribed by law. In the present case, the respondent No.1 followed the due procedure prescribed by law and proceedings came to be initiated under the provisions of the Act. Therefore, the said decision will not be of any assistance to the petitioners. So far as another judgment relied upon by the learned advocate appearing on behalf of the petitioners in the case of Wire-Netting Stores & Another (supra) is concerned, the facts before the Hon'ble Supreme Court were that the petitioners moved the Hon'ble Supreme Court for a writ of mandamus restraining the respondents from dispossessing them from the plot in dispute (factory area) and for restoration of movable and immovable property and the goods belonging to the petitioners on the ground that the petitioners were lessees and without giving any notice or opportunity of being heard the respondents can not evict the petitioners. Here, in the present

case, as stated above the procedure as required under the provisions of the Act is followed by the respondent No.1, proceedings under the Act came to be initiated; petitioners were given opportunity of hearing; and even the petitioners submitted their objections/reply. Under the circumstances, even the said judgment is also not helpful to the petitioners in the facts and circumstances of the case.

10. So far as the contention on behalf of the petitioners to remand the matter to the Deputy Collector, Gondal, on the ground that the said Deputy Collector rejected the Eviction Cases as the respondent No.1 did not produce any document and/or lease deed in favour of original-tenant, and no other evidence was led before the Deputy Collector, Gondal, is concerned, it is required to be noted that admittedly the lease was in favour of respective respondent No.2. The respective petitioners have not been able to

produce any evidence to satisfy that subletting in their favour is valid and/or the same was permissible. Once the respondent No.1 has established that the shop was let-out in favour the respondent No.2 and the same has been sublet to the petitioners, the onus is thereafter upon the petitioners to prove that subletting in their favour is valid. Admittedly, and even as conceded by the learned advocate appearing on behalf of the petitioners, there is no valid lease in favour of the petitioners and that they are banking upon their long possession only. It is required to be noted that the proceedings came to be initiated in the year 1991, and as there is no evidence and/or valid lease in favour of the petitioners and the fact of subletting in favour of the petitioners by the respective respondent No.2 having been admitted, there is no question of remand of the matter to the Deputy Collector on these facts. Under the circumstances, it cannot be said that the judgment and order passed

by the Appellate Court in allowing the appeals submitted under Section 9 of the Act and directing the petitioners and the respondent No.2 to hand over peaceful possession of the shops in question is in any way illegal and/or arbitrary and/or dehors the provisions of the Statute. As such there is no jurisdictional error, much less an error of law, committed by the Appellate Court which require interference by this Court in exercise of power conferred under Article 227 of the Constitution of India.

11. Before parting, it is required to be observed about the contentions on behalf of the petitioners that they are in possession of the shops in question since long and they are ready and willing to pay enhanced rent also, and if the petitioners are evicted some other persons will be inducted as tenants. While dismissing the present Special Civil Applications, it is observed that, if the respondent No. 1 propose to

lease the shops in question after taking possession from the concerned petitioners by public auction, in that case the petitioners may also be permitted to compete and if all other things are equal inclusive of offering the rent, then considering their possession they may be given priority over other persons.

12. With these observations and directions, the present Special Civil Applications are dismissed.

[M.R. Shah, J.]

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